

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ERIC L. JEFFRIES, :
Plaintiff, : Case No. C-1-02-351
vs. : (Judge Beckwith)
CENTRE LIFE INSURANCE COMPANY, : (Magistrate Judge Hogan)
et al., :
Defendants. :
:

DECLARATION OF DEFENDANTS' COUNSEL
PETER M. BURRELL

Upon oath, the declarant states as follows pursuant to the provisions of 28 U.S.C. § 746:

1. My name is Peter M. Burrell and I am an attorney at law licensed to practice in the State of Ohio. I serve as trial attorney for Defendants in the above matter.
2. On August 12, 2003, I wrote to Plaintiff's counsel, telling him, among things:
... we have not been able to schedule the depositions of Mr. Jeffries' treating physicians before the end of August. You indicated that you would not object to doing these depositions after the close of lay witness discovery and we have now learned that at least two of his doctors are available on September 11 and 12. Hopefully that date will work for you so that we can complete these depositions at that time. Let me know or have Cindy call Christy so that we can confirm these dates.

See Exhibit 1 attached hereto.

3. Plaintiff's counsel has never responded to my inquiry about his availability on September 11 and 12 for the treating physician depositions.
4. Two days later, on August 14, 2003, I again wrote to Plaintiff's counsel and in the last paragraph asked, "Finally, are you available on September 11 and 12 for

depositions of Mr. Jeffries' treating physicians? I need to know as soon as possible."

See Exhibit 2 attached hereto.

5. Plaintiff's counsel never responded to this inquiry about his availability on September 11 and 12.
6. On August 19, 2003, I wrote to Plaintiff's counsel and advised him that I would go ahead and schedule the September 11 and 12 dates I had previously mentioned so that we could get Mr. Jeffries' doctors on line.

See Exhibit 3 attached hereto.

7. I still do not know whether Plaintiff's counsel is available on September 11 and 12 for these depositions.
8. On September 2, 2003 I advised Plaintiff's counsel that Dr. McClellan is not available on September 11 or 12 but can be made available on September 16, 2003.

See Exhibit 4 attached hereto.

I declare the foregoing to be true and correct to the best of my knowledge and belief upon penalty of perjury.

Dated: September 2, 2003



Peter M. Burrell (0044139)
Wood & Lampung LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2491
(Telephone) (513) 852-6000
(Facsimile) (513) 852-6087

Attorneys for Defendants
Massachusetts Casualty Insurance Company
and Disability Management Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Michael A. Roberts,
Graydon, Head & Ritchey, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202,
by hand delivery this 2 day of September 2003.

A handwritten signature in black ink, appearing to read "Michael A. Roberts", is written over a horizontal line.

185153.1

WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
CINCINNATI, OHIO 45202-2491
TELEPHONE (513) 852-6000
FAX (513) 852-6087

PETER M. BURRELL
DIRECT DIAL: 513-852-6096
E-MAIL: pmburrell@woodlamping.com

August 12, 2003

VIA FACSIMILE (651-3836) AND E-MAIL (mroberts@gradon.com)

Michael A. Roberts, Esq.
Graydon, Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157

Re: Eric L. Jeffries v. Centre Life Insurance Company, et al.
Case No. C-1-02-351

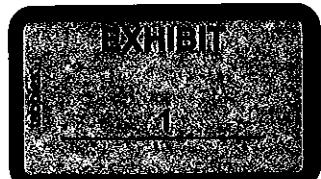
Dear Mike:

I was out of town much of last week, but I have now had an opportunity to review Judge Hogan's most recent discovery Orders (Docs. 69, 70 and 71). The Order relating to our Motion for Protective Order (Doc. 70) identifies the following deponents: Richard Turek, John Anderson, Mitchell Clionsky, Ph.D., Eileen Sweeney, Bill Gelardi, Jeff Champagne, Lance Faniel, Spencer McNeil and Laurie Breitner.

You have already taken Jeff Champagne's deposition, both as DMS' 30(B)(6) witness and in his individual capacity, so I assume he was inadvertently added to this list. Also, I believe you requested a 30(B)(6) deposition of Centre Life Insurance Company. Let me know if you still intend to proceed with that deposition. Finally, as you know, Bill Gelardi is no longer with the company. Spencer McNeil and Laurie Breitner also fall into that category.

I have contacted my client to find out when Mr. Turek, Dr. Clionsky and Lance Faniel would be available for deposition. As the Court suggested, "it would make sense to schedule the depositions of Ms. Sweeney and Mr. Anderson at a later date than the others, in the event their testimony becomes unnecessary." In any event, the scope of Ms. Sweeney and Mr. Anderson's deposition would be limited to "what was communicated by DMS in order to obtain the contractual relationship with Centre Life."

We are shooting for the week of August 25, and I will let you know what I hear from my client with regard to deponent availability during that week. If we cannot schedule them during that week, I am willing to extend the discovery period for lay witnesses, so that you can complete these depositions.



Michael A. Roberts, Esq.
August 12, 2003
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In that regard, we have not been able to schedule the depositions of Mr. Jeffries' treating physicians before the end of August. You indicated that you would not object to doing these depositions after the close of lay witness discovery and we have now learned that at least two of his doctors are available on September 11 and 12. Hopefully that date will work for you so that we can complete these depositions at that time. Let me know or have Cindy call Christy so that we can confirm these dates.

Finally, I understand that we have scheduled Mr. Jeffries' deposition for next Tuesday, August 19 at 12:30 p.m. in your offices. As we had discussed several weeks ago, we are still waiting for the documents which the Court ordered your client to produce in its November 8, 2002 Order. We are certainly willing to proceed with Mr. Jeffries' deposition next week without those documents, but it will have to be continued in progress if those documents are not produced in advance of his deposition. Let me know how you would like to proceed.

As a postscript, we are still waiting for responses to our Second Request for Production of Documents. When can we expect those documents?

Very truly yours,

Peter M. Burrell/Smk

Peter M. Burrell

PMB/smk

WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
CINCINNATI, OHIO 45202-2491
TELEPHONE (513) 852-6000
FAX (513) 852-6087

PETER M. BURRELL
DIRECT DIAL: 513-852-6096
E-MAIL: pmburrell@woodlamping.com

August 14, 2003

VIA FACSIMILE (651-3836) AND E-MAIL (mroberts@gradon.com)

Michael A. Roberts, Esq.
Graydon, Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157

Re: Eric L. Jeffries v. Centre Life Insurance Company, et al.
Case No. C-1-02-351

Dear Mike:

I am following up on my August 12, 2003 letter and our telephone conversation of that date. With regard to the availability of deponents during the week of August 25, I have learned that Dr. Clionsky is available the afternoon of August 27. Lance Faniel is available on either the 26th or the 27th. Mr. Turek is not available during that week.

Also, you had asked for last known addresses for Bill Gelardi, Spencer McNeil and Laurie Breitner. They are listed below.

William Gelardi
21-1 Rice Lane
Worcester, MA 01604

Spencer McNeil
35 Corcoran Road
Burlington, MA 01803

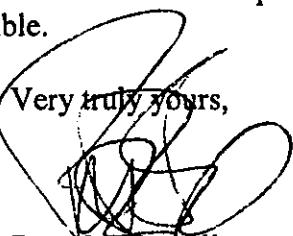
Laurie Breitner
87 Chesterfield Road
Westhampton, MA 01027

By the way, Dr. Clionsky and Lance Faniel are both located in Springfield, Massachusetts.



Michael A. Roberts, Esq.
August 14, 2003
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Finally, are you available on September 11 and 12 for depositions of Mr. Jeffries' treating physicians? I need to know as soon as possible.


Very truly yours,
Peter M. Buffrell

PMB/smk

WOOD & LAMPING LLP
SINCE 1927

ATTORNEYS AT LAW

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CINCINNATI, OHIO 45202-2491
TELEPHONE (513) 852-6000
FAX (513) 852-6087

PETER M. BURRELL
DIRECT DIAL: 513-852-6096
E-MAIL: pmburrell@woodlamping.com

August 20, 2003

VIA FACSIMILE (651-3836)

Michael A. Roberts, Esq.
Graydon, Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157

Re: Eric L. Jeffries v. Centre Life Insurance Company, et al.
Case No. C-1-02-351

Dear Mike:

After reviewing your August 19 letter addressing deposition scheduling, I wondered whether you had read our August 12 letter. In it, we noted that Judge Hogan's Order (Doc. 70) identified the following deponents: Richard Turek, John Anderson, Mitchell Clionsky, Ph.D. Eileen Sweeney, Bill Gelardi, Jeff Champagne, Lance Faniel, Spencer McNeil and Laurie Breitner. Because, at one point, you had requested a 30(B)(6) deposition of Centre Life Insurance Company and the company was not on Judge Hogan's list, we asked whether you intended to proceed with that deposition. In spite of our request, you did not respond.

We also advised you that along with Bill Gelardi (who you knew was no longer with the company), Spencer McNeil and Laurie Breitner also fell into that category. You then requested last known addresses for these individuals and we immediately provided them to you. See our August 14, 2003 letter. We also informed you that we would try to make Dr. Clionsky, Lance Faniel and Richard Turek available for depositions during the week of August 25. On August 14, we told you that Dr. Clionsky and Mr. Faniel were available on August 27, but that Mr. Turek was not available during the week of August 25. We also told you that if we could not schedule the depositions of individuals you requested, we would be willing to extend the discovery period for lay witnesses so that you could complete those depositions.

Finally, we quoted Judge Hogan's Order in which he suggested that "it would make sense to schedule the depositions of Ms. Sweeney and Mr. Anderson at a later date than the others, in the event their testimony becomes unnecessary." It is only now, a week after receiving our August 12 letter, that you demand "immediate" notification regarding the availability of Centre Life, Ms. Sweeney or Mr. Anderson.

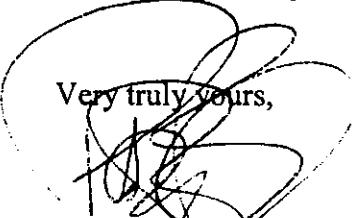


Michael A. Roberts, Esq.
August 20, 2003
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So here is where we stand now. Dr. Clionsky is available for his deposition on August 27 at 1:00 p.m. Mr. Faniel is available on August 27 at any time. Mr. Gelardi, Mr. McNeil and Ms. Breitner have been issued subpoenas. Hopefully they will be available for deposition sometime next week. Because Mr. Turek is not available next week, we will make him available after the close of discovery so that you can complete his deposition. With regard to Centre Life, the individual we would identify in response to your prior 30(B)(6) notice is not available next week, but we are willing to make him available after the close of discovery. Regarding the Centre entity referred to in Andy Cohen's deposition, we need more direction from you articulating the subject matter of this deponent's testimony. Finally, like Judge Hogan, we believe that it makes sense to "schedule the depositions of Ms. Sweeney and Mr. Anderson at a later date than the others, in the event their testimony becomes unnecessary."

We are doing our level best to be reasonable, flexible and cooperative. We asked you a week ago whether you were going forward with a Centre Life 30(B)(6) deposition. We told you a week ago where we stood with regard to Mr. Sweeney and Mr. Anderson's deposition. We responded immediately to your request for last known addresses of former employees. We have offered to complete the depositions you want after the close of lay witness discovery.

Your response has been to cancel Plaintiff's deposition, refuse to tell us whether you are available on September 11 and 12 for the depositions of Mr. Jeffries' treating physicians (despite three written requests) and complain that we are not cooperating. The record speaks for itself.

Very truly yours,

Peter M. Burrell

PMB/smk

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SINCE 1927

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600 VINE STREET, SUITE 2500
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TELEPHONE (513) 852-6000
FAX (513) 852-6087

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E-MAIL: pmburrell@woodlamping.com

September 2, 2003

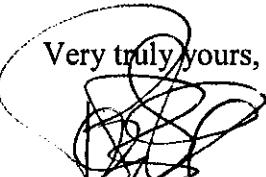
Via Facsimile No. 651-3836
and Regular Mail

Michael A. Roberts, Esq.
Graydon, Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157

Re: Eric L. Jeffries v. Centre Life Insurance Company, et al.
Case No. C-1-02-351

Dear Mike:

I am writing to confirm the deposition dates for Drs. Nunlist-Young, Luggen, Dunn and McClellan. Dr. Nunlist-Young is scheduled for Thursday, September 11 at 5:30 p.m. Dr. Luggen and Dr. Dunn are both scheduled for Friday, September 12 at 10:00 a.m. and 2:00 p.m. respectively. Although we were working to schedule Dr. McClellan for a time on the 11th and 12th, his office informed us recently that he is only available for deposition on Tuesday, September 16, at 3:00 p.m. We will issue a subpoena to him for that date.

Very truly yours,

Peter M. Burrell

PMB/rh

